

## **REMARKS**

The present Amendment is in response to the Examiner's Final Office Action mailed October 17, 2006. Claims 2, 3, 9, 14, 16-37, 39, and 43-46 are cancelled, claims 1, 4, 5, 10-12, 15, and 38-42 are amended, and new claims 47-54 are added. Claims 1, 4-8, 10-13, 15, 38, 40-42, and 47-54 are now pending in view of the above amendments.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

### **I. Rejection Under 35 U.S.C. § 112, Second Paragraph**

The Examiner rejects claim 1 under 35 U.S.C. § 112, Second Paragraph for indefiniteness on the grounds that the elements "a second one of the at least one gain portion" and "at least one gain portion" are inconsistent. Applicants have amended claim 1 to remove the element, "a second one of the at least one gain portion". As such, any unclarity has been removed and the Applicant respectfully requests that the rejection of claim 1 be withdrawn.

### **II. 35 U.S.C. § 112, First Paragraph**

The Examiner also rejects claim 1 under 35 U.S.C. § 112, first paragraph. As discussed above, claim 1 has been amended to remove the element that was the subject of the rejections under section 112. As such, the Applicants respectfully request that the rejection be withdrawn.

### III. PRIOR ART REJECTIONS

#### A. Rejection Under 35 U.S.C. § 103

The Examiner rejects claims 1, 4, 10-12, 38-40, and 43 under 35 U.S.C. § 103 as being unpatentable over *Payne* (U.S. Patent No. 5,260,823) in view of *Sum* (U.S. Patent No. 6,377,396). Applicants traverse the Examiner's rejection for obviousness on the grounds that the references – either individually or in combination – fail to teach or suggest each and every element of the rejected claims.

According to the applicable statute, a claimed invention is unpatentable for obviousness if the differences between it and the prior art “are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.” 35 U.S.C. § 103(a) (2005); *Graham v. John Deere Co.*, 383 U.S. 1, 14 (1966); MPEP 2142. Obviousness is a legal question based on underlying factual determinations including: (1) the scope and content of the prior art, including what that prior art teaches explicitly and inherently; (2) the level of ordinary skill in the prior art; (3) the differences between the claimed invention and the prior art; and (4) objective evidence of nonobviousness. *Graham*, 383 U.S. at 17-18; *In re Dembiczak*, 175 F.3d 994, 998 (Fed. Cir. 1999). It is the initial burden of the PTO to demonstrate a *prima facie* case of obviousness. If the PTO does not set forth a *prima facie* case of obviousness, the applicant is under no obligation to submit evidence of nonobviousness. MPEP 2142 (emphasis added).

According to MPEP section 2143:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

(Emphasis added).

Claim 1, as amended, includes the elements, “a first gain equalization filter portion...a second gain equalization filter portion...the first gain equalization filter portion attenuates a first

wavelength; the second gain equalization filter portion attenuates a second wavelength; and the first wavelength is different than the second wavelength...” in combination with the other elements of claim 1. (Emphasis added).

Neither *Payne* nor *Sun* teach or suggest the combination of elements set forth in claim 1. As such, the Applicants respectfully request that the rejection of claim 1 be withdrawn. Claims 4, 10-12, 38-40, and 43 depend from claim 1. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). As such, the Applicants respectfully request that the rejection of claims 4, 10-12, 38-40, and 43 be withdrawn at least for the same reasons as claim 1.

The Examiner rejects claim 5 under 35 U.S.C. § 103 as being unpatentable over *Payne* in view of *Sun*, further in view of *DiGiovanni et al.* (U.S. Patent No. 5,659,644). The Examiner rejects claim 15 under 35 U.S.C. § 103 as being unpatentable over *Payne* in view of *Sun*, further in view of *Espindola et al.* (U.S. Patent No. 5,920,424). The Examiner rejects claim 42 under 35 U.S.C. § 103 as being unpatentable over *Payne* in view of *Sun*, further in view of *Nakazawa* (U.S. Patent No. 5,206,925).

Claims 5, 15, and 42 depend from claim 1. As such, the Applicants respectfully request that the rejections of claims 5, 15, and 42 be withdrawn at least for the same reasons as claim 1.

#### **IV. NEW CLAIMS**

Claims 47-54 have been added and depend from claim 1. As such, claims 47-54 are believed to be allowable at least for the same reasons as claim 1.

### **CONCLUSION**

In view of the foregoing, Applicants believe the claims as amended are in allowable form. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorney.

Dated this 19th day of March, 2007.

Respectfully submitted,

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